IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6996 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA.

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

GUJARAT DAIRY DEVELOPMENT CORPORATION LTD.

Versus

AMRUTBHAI MOHANBHAI DESAI

Appearance:

MR KM PATEL for Petitioner

MR KR KOSHTI for Respondent No. 1, 2

CORAM : MR.JUSTICE R.BALIA.

Date of decision: 22/01/98

ORAL JUDGEMENT

1. Rule. Heard learned counsel for the petitioner as well as the respondents. Two workmen of Abad Dairy, namely Amrutbhai Mohanbhai Desai and Ishwarbhai Muljibhai Desai raised an industrial dispute with their employer that they have worked for more than 900 days for the dairy in a period of 5 years between 1.4.1982 and 1.4.1987 and in terms of award rendered in Ref. No. 179

of 1975 of Industrial Tribunal, Ahmedabad, they are entitled to be made permanent. The employer resisted their demand inter alia on the ground that the said award was rendered in connection with the workmen employed in the Engineering Department of the Ahmedabad Municipal Corporation, whereas the Abad Dairy, though originally an establishment of Ahmedabad Municipal Corporation has since been separated and has an independent autonomous existence under the control of Gujarat Dairy Development Corporation, and that the award made in dispute between the Ahmedabad Municipal Corporation and its workmen is not applicable to the present workmen, who are employees of Abad dairy, a unit of GDDC, to whom the award does not govern.

2. It was also the case of the employer that the workmen were not daily rated workmen but were only Badli workmen and were not entitled to status of permanent.

3. The Tribunal found as a fact that the two workmen were employed for more than 900 days in the said block of 5 years period. It also found in favour of the petitioner that the decision rendered in respect of employees working in different department of engineering of Ahmedabad Municipal Corporation is not ipso facto applicable to the cases of workmen employed in the dairy in question. However, on the basis of material produced before it, it further found that the benefit of bestowing permanent status as were made available under the award in the case of Ahmedabad Municipal Corporation has been made available to its workmen by the Dairy itself on the basis of their working for 900 days or more in a block of five years and keeping in view adoption of the practice on the part of the employer, the Tribunal in its award thought it justified to extend the benefit of parity of treatment to these two workmen as well who were found to have worked for more than 900 days by 1.4.1987, in preceding five years. The benefit conferred was that with effect from 1.4.1987 they be treated as permanent and consequential benefits.

4. The plea of employer that workmen are Badli workmen and were not entitled to be made permanent was not favoured by the Tribunal inter alia on the ground that the like benefits had been extended by the employer in the present case to Badli workmen as well, thus no distinction can be made merely on the basis that the applicants were Badli workmen.

5. These findings were recorded on the basis of material before it and being finding of fact based on

appreciation of evidence has to be accepted. Learned counsel for the petitioner has also not challenged these finding of fact otherwise, and in my opinion rightly so.

6. Learned counsel for the petitioner in this regard relied on decision of Supreme Court in the case of Chandigarh Administration and Anr. v. Jagjit Singh and Anr. reported in AIR 1995 SC 705 for contending that merely because some act has been done inadvertently in the past by mistake, the petitioner cannot be asked to act in consonance with the same in future also.

7. This contention of the learned counsel in my opinion is not well founded. Here it is not a case where the petitioner has acted with illegality or contrary to rules affecting the validity of action taken by it and perpetuating that illegality in future. It was open to the petitioner as a benevolent employer to extend certain benefits to its workmen on general principles, without there being any binding award or adjudication from any quarter. There is no prohibition against the employer from acting reasonably in consonance with fairness, equity and justice in dealing with its workmen. Nor there is any material which could justify that in extending the benefits of permanency to its workmen by adopting the yardstick adopted in the award in the case of AMC the petitioner was labouring under any mistake about the binding nature of award in the case of AMC to it. It cannot be assumed that a person who was never a party to a dispute will consider himself bound by decision in dispute between third parties.

8. In item No. 10 of the 5th Schedule appended to Industrial Disputes Act, 1947 to employ workmen as Badli, Casual or Temporary and to continue them as such for years with the object of depriving them of the status and privileges of permanent workmen has been considered as unfair labour practice for which the workmen is entitled to raise industrial dispute and seek redress. The long employment of workmen as Badlis, Casuals or Temporaries have otherwise been considered by catena of decisions of the highest court of the land to be arbitrary requiring remedial measures as they become breeding grounds of industrial unrest. Therefore, conferring permanent status on the workmen who are considered as Badlis, Casuals or Temporaries on certain principles whether formulated as rules binding on the parties giving a right to the workmen to be made permanent on fulfillment of those conditions or adoption of certain principles as guiding by the employer for extending the benefit of permanent status to workmen who were hitherto employed as

Badli, Casual or Temporary Workmen in its establishment for long period cannot be treated as an illegal act of the employer for which he can take a shelter of having committed an illegality by mistake for which he should not be saddled with penalty for perpetuating such illegality in future.

9. The principle on which reliance has been placed alludes to situation where extra ordinary jurisdiction of the High Court for compelling the authority to repeat the illegality over again and again by issue of prerogative writs on the spacious plea of Article 14 of infringing right of equality by practicing irrational discrimination. It is in that context, the court observed :

"The mere fact that the respondent authority has passed a particular order in the case of another person similarly situated can never be the ground for issuing a writ in favour of the petitioner on the plea of discrimination. The order in favour of the other person might be legal and valid or it might not be. That has to be investigated first before it can be directed to be followed in the case of the petitioner. If the order in favour of the other person is found to be contrary to law or not warranted in the facts and circumstances of his case, it is obvious that such illegal or unwarranted order cannot be made the basis of issuing a writ compelling the respondent-authority to repeat the illegality or to pass another unwarranted order. The extraordinary and discretionary power of the High Court cannot be exercised for such a purpose. Merely because the respondent-authority has passed one illegal/unwarranted order, it does not entitle the High Court to compel the authority to repeat that illegality over again and again."

Obviously, this ratio has no application where the precedented action with which parity is claimed is a valid and legal order by an authority against whom plea of discrimination is directed. In case treatment accorded to persons similarly situated is not illegal or cannot be said to be unwarranted, ordinarily he is bound to accord the same treatment to others similarly situated. In case he wants to deviate, it becomes his burden to justify deviation from his previous action taken in the light of circumstances by placing cogent material providing a reasonable nexus to object and rationale basis for the same. Plea of mere inadvertency

will not absolve him from providing equal treatment.

10. In the present case, except for the plea that the award is not applicable to the workmen of Dairy ipso facto, no further justification was sought to be made by the petitioner from deviating from the practice which the employer was following in recent past when the demand was raised.

11. In the aforesaid circumstances, I do not find any error apparent on the face of the record in the conclusion arrived at by the Tribunal in directing the equivalent treatment to these two workmen as well on the basis of evidence of like action taken by the petitioner about which there is no dispute.

12. The other contention that has been raised before him is that since making of the award, the establishment in question has become sick industrial unit and proceedings are pending before BIFR and in view thereof, no award declaring the workmen as permanent ought to have been made by continuing the proceedings. Under Section 22 what is prohibited to be proceeded with are proceedings for execution or the like against any of the properties of the industrial company or for the appointment of a receiver in respect thereof and also there is prohibition against proceedings with the suit for recovery of the money or for the enforcement of any security against the industrial company or of any guarantee in respect of any land or advance granted to the industrial company except with the consent of the Board or as the case may be or the appellate authority. Raising the industrial dispute for grant of permanent status and consequential benefits and grant of such relief by a competent Tribunal are not proceedings in the nature of execution or the like against the properties of the industrial company not it is a suit for recovery of money or enforcement of any security against the industrial company. Therefore provisions of Section 22 does not come in way of determination of an industrial dispute by the Tribunal. However, where any recovery become due as a result of award, its recovery by coercive method or through any proceedings in the nature of execution proceedings cannot be proceeded with during the pendency of proceeding before BIFR or appellate authority except with the permission of the concerned authority. That is not the issue at this stage to be considered.

13. Lastly, it was contended by the learned counsel for the petitioner that at any rate though permanency has been granted with effect from 1.4.1987 since the workmen

were employed on the existing terms and conditions as Badli workmen and they were offered employment only as and when the work was available with the employer and payment as per the terms and conditions available at that time was paid to the workmen, the actual monetary benefits during which the workmen were actually not offered work and were not entitled to wages ought not to have been awarded as that would infringe the principle of `no work no wages'.

14. Learned counsel for the respondent workmen has a caveat to this contention.

15. Having carefully considered, I am of the opinion that this last contention on behalf of the petitioners has some substance. It is not a case where workmen has sought a permanent status on the basis of alleging any unfair labour practice or victimisation nor it is a case of reinstatement after illegal termination but is in alteration of status from the continuing terms and conditions of employment to different status more beneficial to workmen. Until that dispute is resolved ordinarily the workmen would be entitled to the emoluments as are available to him under the existing set up and once status is granted though it can be granted from a back date, grant of actual payment of wages during the period from such back date to the date of award even for period for which the employee did not work as per existing term of employment would ordinarily militate against the principle of `no work no wages' and in the present case no extraordinary situation has been pointed out to apply different yard stick.

13. Accordingly, this petition is partly allowed. While the award to the extent that the concerned workmen are to be treated as permanent workmen with effect from 1.4.1987 and may be given their pay scale and designation with effect from 1.4.1987 as are given to the permanent workmen and the period may also be counted for seniority and continuity in service and fixation of pay scale with effect from the date of award is confirmed. However, no actual payment shall be made prior to the date of award for the period for which the workmen have not actually worked. The award to the extent it accedes permanent status and other consequential benefits is otherwise just and does not require any interference except to the extent stated above.

Rule made absolute to the aforesaid extent with no order as to costs.

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